IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8807 OF 2005

Shri Subhash Damodar Salve ...Petitioner

Versus

Shri Digambar Bhika Dhongade & Ors. ...Respondents

Shri P.N.Joshi for the Petitioner.
Shri P.B.Shah for the Respondent Nos.1, 2 to 6 and 8 to 11.
Mrs Mhaisapurkar, A.P.P for the Respondent Nos.12 to 16 and 19.

CORAM : ABHAY S.OKA, J.

DATED : FEBRUARY 22, 2007.

P.C.:

1. Heard Shri Joshi for the Petitioner and Shri Shah for the Respondent Nos.1, 2 to 6 and 8 to 11. The learned A.G.P appears for rest of the Respondents. Application made by the Petitioner for grant of sale permission was rejected by the competent authority. The Petitioner preferred a statutory appeal before the State Government. The said Appeal has been dismissed by order dated 01st February, 2005.

2. Shri Joshi appearing for the Petitioner invited my attention to the order dated 01st February, 2005. He submitted that the order is a non speaking order and the

statutory appeal could not have been disposed of in such a manner. Shri Shah appearing for the contesting Respondents supported the impugned order.

3. I have considered the submissions. It is obvious that the statutory appeal preferred by the Petitioner has been disposed of by the appellate authority by a non speaking order. It appears that the appellate authority was impressed by the fact that one of the co-owners of the property allegedly expressed that he was not ready and willing to sell the land. In my view, this could not have been the only ground to dismiss the statutory appeal without considering the merits of the appeal and without recording reasons. Only on this ground, the impugned order dated 01st February, 2005 deserves to be quashed and set aside. The appellate authority will have to consider the Appeal on merits afresh and to pass a reasoned order after considering the contentions raised by the parties. At this stage, Shri Joshi submits that the issue of grant of sale permission will be governed only by the provisions of the Maharashtra Land Revenue (Transfer Of Occupancy By Tribals to Non-Tribals) Rules, 1975. The appellate authority is bound to consider the provisions

of the said rules while deciding the Appeal afresh.

4. Hence, I pass the following order:

(i) The impugned order dated 01st February, 2005 is quashed and set aside and the appeal preferred by the Petitioner on 29th December, 2003 is restored to the file.

(ii) The appellate authority will decide the appeal afresh in the light of the observations made in this order and will pass a reasoned order.

(iii) The appellate authority will decide the Appeal as expeditiously as possible and preferably on or before 31st August, 2007.

(iv) All contentions of the parties on merits are kept open.

(v) Petition is partly allowed in above terms.

(vi) Parties to act upon an authenticated copy of this order.

JUDGE